

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARY JO HENDERSON, d/b/a 3H
Associates,

Plaintiff,

v.

MAURICE BLOUNT,

Defendant.

CASE NO. C10-5433BHS

ORDER GRANTING
VOLUNTARY DISMISSAL
AND DENYING MOTION
FOR ATTORNEY'S FEES

This matter comes before the Court on Plaintiff Mary Jo Henderson's ("Henderson") notice of voluntary dismissal under Rule 41(a) of the Federal Rules of Civil Procedure (Dkt. 9) and Defendant Maurice Blount's ("Blount") motion for attorney's fees (Dkt. 11).

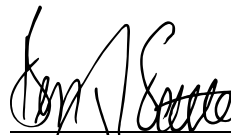
On June 19, 2010, Henderson filed a complaint against Blount alleging a breach of contract and seeking damages including those resulting from Henderson's emotional distress. Dkt. 1. On July 7, 2010, Blount filed a motion to dismiss Henderson's claims for emotional distress under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. 7. On July 29, 2010, Henderson filed a notice of voluntary dismissal of this action without prejudice and without cost. Dkt. 9. On August 10, 2010, Blount responded to the notice stating that he objected to the voluntary dismissal because he filed an answer in this action and because the dismissal would be prejudicial to his defense against the

1 claims for emotional distress. Dkt. 10. On August 5, 2010, Henderson replied to
2 Blount's response to the voluntary dismissal stating that such dismissal would not
3 prejudice Blount as Henderson conceded that she did not have any claims for emotional
4 distress. Dkt. 13. In addition, Henderson states that this Court lacks diversity jurisdiction
5 over the matter as the amount in controversy, without the emotional distress claims, does
6 not exceed the jurisdictional minimum of \$75,000. *Id.*, see 28 U.S.C. § 1332(a). On
7 August 2, 2010, Blount filed his motion for attorney's fees. Dkt. 11.

8 First, the Court notes that contrary to Blount's assertion, no answer has been filed
9 in this action. Accordingly, the Court grants Henderson's notice of voluntary dismissal of
10 this action without prejudice. *See Swedberg v. Marotzke*, 339 F.3d 1139, 1146 (stating
11 that after Defendants have filed a Rule 12(b)(6) motion to dismiss, "plaintiff is free to file
12 a proper notice of dismissal pursuant to Rule 41(a)(1)" and that "Defendants continue to
13 enjoy the protection of that rule, too, in that they may prevent unilateral dismissal by
14 serving plaintiff with an answer"). In addition, the Court concludes that Blount's motion
15 for attorney's fees (Dkt. 11) is denied. Blount cites to Rule 41(d) in support of his
16 motion, but Rule 41(d) only governs an award of costs, not attorney's fees, and is
17 applicable in the court in which a *subsequent* action is filed. Fed. R. Civ. P. 41(d).
18 Therefore, if Henderson files a subsequent action against Blount, he is free to seek relief
19 in the court in which that action is filed.
20

21 Therefore, it is hereby **ORDERED** that Blount's motion for attorney's fees (Dkt.
22 11) is **DENIED** and this action is **DISMISSED without prejudice and without costs**.

23 DATED this 25th day of August, 2010.

24
25
26
27
28

BENJAMIN H. SETTLE
United States District Judge